## BANDAR UTAMA CITY CORPORATION SDN BHD v. DATUK BANDAR, MAJLIS BANDARAYA PETALING JAYA

HIGH COURT MALAYA, SHAH ALAM
HANIPAH FARIKULLAH J
[SUIT NO: 22NCVC-1046-08-2012]
11 NOVEMBER 2015

***STATUTORY INTERPRETATION:*** *Construction of statutes – Intention of Parliament – Government Proceedings Act 1956, ss. 5 and 6 – Whether applicable to local authority – Whether 'government' includes 'local authority' – Whether local authority is a body corporate with separate legal entity – Whether distinct from government*

***WORDS & PHRASES:*** *'Government' – Meaning of – Whether includes local authority – Government Proceedings Act, ss. 5 & 6*

The main issue for consideration in the instant case was whether the plaintiff's failure to re-certify and name the tortfeasor as the defendant in this case would render the suit unsustainable. The defendant contended that the word 'government' in ss. 5 and 6 of the Government Proceedings Act 1956 ('Government Proceedings Act') includes 'a local authority' and hence, the officer of the defendant who was responsible for the alleged tortuous act must be made a party to the suit. On the contrary, the plaintiff contended that the word 'government' in ss. 5 and 6 of the Government Proceedings Act do not include a 'local authority'.

**Held (overruling defendant's preliminary objection):**

**(1)** A local authority is an entity distinct from the government and it has a common seal. It is a corporation under the name of 'a local authority' which carried out functions as provided under the Local Government Act 1976. A local authority, being a body corporate with separate legal entity is not 'government' within the meaning of ss. 5 and 6 of the Government Proceedings Act. (paras 25 & 29)

**(2)** The term 'government' must be interpreted in light of the preamble of the Government Proceedings Act which states that, it is an Act, relating to proceedings by and against the Federal Government and the Government of the States. In the absence of the express words 'local authority' in s. 2 of the Government Proceedings Act, it is not appropriate for the court to assume that 'government' includes 'a local authority'. It is emphatically not the province of the court to write into an Act of Parliament something which is not there. If the intention of Parliament is to include a local authority as 'government' under the Government Proceedings Act, it would have expressly referred to it in s. 2 of the Act. (paras 36, 38-40)

**(3)** From the legal point of view, ss. 5 and 6 of the Government Proceedings Act is not applicable to a local authority. Hence, there was no merit in the defendant's preliminary objection that the plaintiff's failure to name the tortfeasor as the defendant in this case would render the suit unsustainable. The defendant's preliminary objection was therefore overruled. (paras 41-43)

**Case(s) referred to:**
*Assa Singh v. Menteri Besar, Johore [1968] 1 LNS 9 FC* ***(refd)***
*B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC* ***(refd)***
*Badan Peguam Malaysia v. Kerajaan Malaysia [2008] 1 CLJ 521 FC* ***(refd)***
*Ganad Media Sdn Bhd v. Dato' Bandar Kuala Lumpur (No 2) [2002] 6 CLJ 6 HC* ***(refd)***
*George Wimpey v. British Overseas Airways Corporation [1954] 3 All ER 661* ***(refd)***
*Government of Malaysia & Anor v. Akasah Ahad [1985] 1 LNS 107 FC* ***(refd)***
*Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors [2009] 1 CLJ 663 FC* ***(refd)***
*Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA* ***(refd)***
*Lee Kwan Woh v. PP [2009] 5 CLJ 631 FC* ***(refd)***
*Majlis Perbandaran Subang Jaya v. Laguna De Bay Sdn Bhd [2015] 1 CLJ 357 CA* ***(refd)***
*Ronald Philip Devereux & Anor v. Majlis Perbandaran Langkawi Bandaraya Pelancongan & Ors [2013] 3 CLJ 287 HC* ***(refd)***
*St Leornards Municipility v. William & Others (1966) 15 LGRA 62* ***(refd)***
*Sundralingam v. Ramanathan Chettiar [1967] 1 LNS 173 FC* ***(refd)***
*Tan Suan Choo v. Majlis Perbandaran Pulau Pinang [1982] 1 LNS 83 HC* ***(refd)***

**Legislation referred to:**
Federal Constitution, arts. 8(1), 10(2)(a), 69(2), 162(6)
Government Proceedings Act 1956, ss. 2, 5, 6(1), 29
Local Government Act 1976, s. 13
Specific Relief Act 1950, s. 54(d)

**Other source(s) referred to:**
*Benion On Statutory Interpretation,* 5th edn, p 732

*For the plaintiff - Gopal Sri Ram, Lim Choon Khim & David Yii Hee Kiet; M/s Chooi, Saw & Lim*
*For the defendant - Kamaruzaman M Arif, Chong Pow Yew, Sofiah Omar & Nurliza Shafien; M/s Kamaruzaman Arif, Amran & Chong*

*Reported by S Barathi*

## JUDGMENT

**Hanipah Farikullah J:**

### Introduction

**[1]** In this proceeding, the matter before the court is for the substantive proceedings to be dismissed on the ground that the plaintiff failed to recertify and name the tortfeasor as the defendant in this case and will render the suit unsustainable.

**[2]** The defendant contended that the word "Government" in ss. 5 and 6 of the Government Proceedings Act 1956 includes "a local authority" and hence the officer of the defendant who was responsible for the alleged tortious act must be made a party to this suit. A

**[3]** On the contrary, it is the plaintiff's position that the word "Government" in ss. 5 and 6 of the Government Proceedings Act do not include "a local authority". B

**Background**

**[4]** The plaintiff in its statement of claim alleged that the defendant had trespassed Jalan Tanjung and in essence sought the following reliefs: C

(i) an injunction order to prevent the defendant from trespassing Jalan Tanjung; and

(ii) damages for trespassing Jalan Tanjung.

**[5]** The defendant refuted the plaintiff's claim and contended that it has powers under the Street, Drainage and Building Act 1974 to manage Jalan Tanjung. D

**[6]** The plaintiff filed an injunction suit against the defendant and obtained an interim injunction on 1 October 2012. This case is now being fixed for trial for the permanent injunction. E

**The Defendant's Submission**

**[7]** The defendant submitted that the plaintiff's application for injunction should fail as the plaintiff has failed to identify and name the tortfeasor as the defendant in this case. F

**[8]** Learned counsel for the defendant submitted as follows.

**[9]** It is trite law that the officer of the Government who was responsible for the alleged tortious act must be made a party before the employer can be made vicariously liable. G

**[10]** In this case, Datuk Bandar as Mayor and/or Majlis Bandaraya Petaling Jaya ("MBPJ") cannot be vicariously liable for the alleged act of the tortfeasor. Instead of naming Datuk Bandar Majlis Bandaraya Petaling Jaya as the sole defendant, the identity and liability of the officer involved must be ascertained and established and he must be joined as the defendant before Datuk Bandar and/or MBPJ can be held vicariously liable. H

**[11]** In support of his contention, learned counsel for the defendant relied on ss. 5 and 6(1) of the Government Proceedings Act and the Federal Court's decision in the case of *Kerajaan Malaysia & Ors v. Lay Kee Tee & Ors* [2009] 1 CLJ 663 in which the Federal Court stated as follows: I

**[16]** Thus, I entirely agree with the views expressed by Abdul Aziz J (later FJ) in *Haji Abdul Rahman, supra*. Contrary to the finding of the Court of Appeal, *Haji Abdul Rahman* was correctly decided and should be upheld. *Therefore, on the proper construction of ss. 5 and 6 of Act 359, in any claim in tort against the Government, the officer of the Government who was responsible for the alleged tortious act must be made a party and his liability be established before the Government can be made liable vicariously as principal. It would be insufficient to merely identify the officer without joining the officer as a party because liability by evidence needs to be established. It is only upon a successful claim against the officer personally can a claim be laid against the Government.*

**[17]** In the present case, all the eight causes of actions are actions in tort or tort-based premised on the act or omission of an individual. None of the Governments sued is capable of committing the wrong pleaded. *Since the Governments' liability in tort can only be vicarious by virtue of ss. 5 and 6 of Act 359, and as the officers who were responsible for the alleged wrongdoing were not joined as defendants to the action, it is therefore not possible in law to maintain a successful claim in tort against the Governments as primary tortfeasors. That being so, the appellants' application to strike out the respondents' actions is meritorious.*

**[12]** Further, in support of his contention that "a local authority" is "Government", learned counsel for the defendant in his oral submission relied on the Court of Appeal's decision in the case of *Majlis Perbandaran Subang Jaya v. Laguna De Bay Sdn Bhd* [2015] 1 CLJ 357. Delivering the decision of the Court of Appeal, Hj Hamid Sultan bin Abu Backer JCA referred to an article titled *"Introduction to Local Government in Malaysia"* the author Dilly M Hill (1974) observes as follows:

In Malaysian context, report by Royal Commission of Inquiry stated that local government could see as below:

(a) Representing the third tier in federal structure

(b) Administered by state nominated councillors

(c) Geographically encompassing a portion of the country

(d) It is infra – sovereign

(e) Subordinate and subject to the control of the state (limited of financial and administration issues

(f) It is separate legal unit/entity from higher government of other local authorities

(g) Has power to sue and be sued

(h) Provide obligatory and discretionary to provide goods and services.

1.2 Concept of local government

I. Local Government is responsible on the local affairs just like what the state and federal government had set.

II. The status of the Local Government is much lower than the state and federal government.

III. The Local Government autonomy is administering aspect is set by the state and federal government.

IV. The Local Government has the power to sue or be sued, to sign or agree on contracts and to gain properties.

**[13]** In light of the above submissions, learned counsel for the defendant argued that the officer of the defendant who was in charge during the alleged "trespass" action must be joined as the defendant and his liability must be established.

**The Plaintiff's Submission**

**[14]** The plaintiff objected to the defendant's preliminary objection based on the following reasons.

**[15]** Learned counsel for the plaintiff submitted that "a local authority" is not a Government Department that would fall under s. 54(d) of the Specific Relief Act 1950 and ss. 5, 6 and 29 of the Government Proceedings Act.

**[16]** In support of his contention, learned counsel for the plaintiff referred me to the following authorities:

(i) *Tan Suan Choo v. Majlis Perbandaran Pulau Pinang* [1982] 1 LNS 83; [1983] 1 MLJ 323;

(ii) *Ronald Philip Devereux & Anor v. Majlis Perbandaran Langkawi Bandaraya Pelancongan & Ors* [2013] 3 CLJ 287; [2012] 4 MLJ 665;

(iii) *Ganad Media Sdn Bhd v. Dato' Bandar Kuala Lumpur (No. 2)* [2002] 6 CLJ 6; [2002] 1 MLJ 508; and

(iv) *Sundralingam v. Ramanathan Chettiar* [1967] 1 LNS 173; [1967] 2 MLJ 211

**[17]** Further, learned counsel for the plaintiff submitted that if the court is not with the plaintiff on the above submission, then it is the plaintiff's contention that ss. 5 and 6 of the Government Proceedings Act 1956 as interpreted by the Federal Court (which interpretation is binding on this court) are *ultra vires* art. 69(2) of the Federal Constitution and therefore void.

**[18]** On this point, learned counsel for the plaintiff submitted in summary as follows:

a) The Government Proceedings Act 1956 is a pre-Merdeka statute. It must therefore accord with the Constitution. The court should try to bring ss. 5 and 6 of the GPA to accord with the Constitution for it is possible pursuant to art. 162(6). If the sections cannot be brought to accord with the Constitution, then they must be struck down.

b) In support of his contention learned counsel for the plaintiff relied on the following authorities:

(i) *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14; [1962] 1 MLJ 169

(ii) *Assa Singh v. Menteri Besar, Johore* [1968] 1 LNS 9; [1969] 2 MLJ 30; and

(iii) *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169; [2005] 6 MLJ 289

c) Sections 5 and 6 of the Government Proceedings Act cannot be brought to accord with art. 69(2) because they place a restriction on the right to bring suit to judgment. Article 69(2) is unconditional. It contains no restrictions. The expression "be sued" means sued to judgment. (See *George Wimpey v. British Overseas Airways Corporation* [1954] 3 All ER 661 at p. 664 per Viscount Simonds).

d) Therefore, any restriction which prevents the Government from being sued to judgment is unconstitutional by virtue of art. 69(2) because the article does not permit any restriction unlike for example, art. 10(2)(a).

e) Article 69(2), unless given the interpretation which the plaintiff seeks to place on it, will lead to unfairness. This is because the Government may sue with no restrictions but a subject cannot sue in tort unless he identifies the tortfeasor. This offends against art. 8(1) which the Federal Court has held must be read into the other articles of the Constitution to produce fairness.

f) The interpretation of art. 69(2) should produce a fair result and that is only achieved if the court rules that any law that imposes a restriction on a right to sue a Government to judgment is an invalid law. (See also *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 1 CLJ 521; [2008] 2 MLJ 285 at para 86, and *Lee Kwan Woh v. Public Prosecutor* [2009] 5 CLJ 631.

**Issue**

**[19]** The main issue for consideration is whether the plaintiff's failure to recertify and name the tortfeasor as the defendant in this case will render the suit unsustainable.

**[20]** In order for the court to answer this issue, the parties agreed in the course of the hearing that the central question in these proceedings concerns the meaning to be given to the word "Government" in ss. 5 and 6 of the Government Proceedings Act, whether it would include "a local authority".

**Decision**

*Status Of A Local Authority*

**[21]** It will be relevant first of all to consider the status of a local authority under the Local Government Act 1976. ("Local Government Act")

**[22]** Section 13 of the Local Government Act provides that, a local authority shall be a 'body corporate' and should have perpetual succession and a common seal, and may sue and be sued, acquire, hold and sell property, generally do perform such and things as bodies corporate may by law do and perform. A

**[23]** It is not without significance that in the Local Government Act itself by s. 13, a local authority is constituted as a corporation by express words of incorporation. B

**[24]** It would necessarily follow that being a body corporate, the separate legal entity principles apply. C

**[25]** Hence, in my view, a local authority is an entity distinct from the Government and it has a common seal. It is a corporation under the name of "a local authority" which carries out functions as provided under the Local Government Act.

**[26]** In the case of *Tan Suan Choo v. Majlis Perbandaran Pulau Pinang* [1982] 1 LNS 83; [1983] 1 MLJ 323, Edgar Joseph Jr J (as he then was) states as follows: D

> I do not consider that the Defendants although undoubtedly a Local Authority within the meaning of section 2 of The Local Government Act, 1976 (Act 171) come within the scope of the words "any department of any Government of Malaysia ..." which phrase I understand to mean the Government of any State or the Government of Malaysia or any department thereof. E
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> In arriving at this conclusion I have taken into consideration matters relating to the functions and control of the Defendants. I have asked myself whether the Defendants are under government control and exercised government functions. This is the approach Lord Denning, MR, adopted in *Trendtex Corpn v. Central Bank of Nigeria* [1977] 1 All ER 881 (a case not cited to this court) when he had to decide the question whether a plea of sovereign immunity which is available to a foreign sovereign state or its department could be successfully invoked. F G
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> The following passage in his judgment is relevant:?
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> I confess that I can think of no satisfactory test except that of looking to the functions and control of the organisation do not think that it should depend on the foreign law alone. I would look to all the evidence to see whether the organisation was under government control and exercised government functions. That is the way in which we looked at it in *Mellenger v. New Brunswick Corpn*: H
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> [The corporation] has never pursued any ordinary trade or commerce. All that it has done is to promote the industrial development of the province in a way that a government department does ... I

I accordingly turn to consider certain provisions of the relevant statute under which the Majlis Perbandaran Pulau Pinang was set up. By Penang P.U. 73/76 dated December 13, 1976, The Local Government Act, 1976 (Act 171) (which for brevity and convenience I shall refer to as 'the Act') came into force in the State of Penang on December 15, 1976. By section 13 of the Act, local authorities shall be corporations sole with perpetual succession and a common seal and may sue and be sued and can acquire, hold and sell property. Then power is given to Local Authorities to make rules for the purpose of making and maintaining good conduct and discipline among officers and employees (sections 16 to 18). It would appear, therefore, that Chap. D entitled "Public Officers (Conduct and Discipline) (Chapter D) General Orders, 1980," which applies to Government officers has no application to officers and employees of Local Authorities.

Next, we find that provision is made for a Superannuation or Provident Fund (section 18). There appears no provision for pensions such as we have for Government officers. Part IV contains sections 19 to 38 which deal with conduct of business of Local Authorities. Part V contains sections 39 to 52 which are general financial provisions. All monies received by the Local Authority are constituted a fund called the Local Authority Fund and shall together with all property become vested in the Local Authority and be under the control and direction of the Local Authority (section 40(1)). All orders or cheques against the Fund shall be signed by two officers authorised in writing by the Local Authority (section 40(3)). However, monies may only be invested in securities in which trustees may invest or in such other manner as authorised by the Minister of Finance (section 40(4)). Clearly, therefore, Local Authorities enjoy a considerable degree of financial autonomy. Part VI of the Act deals with the auditing of accounts. Then Part XIV contains certain miscellaneous provisions two of which are worth mentioning: one provides that the Public Authorities Protection Ordinance, 1948, applies to any suit against a public authority (section 124) and the other that its employees and officers shall be deemed public servants within the meaning of section 21 of the Penal Code (section 126). Now the word "deemed" in a statute sometimes has an artificial connotation which would not otherwise apply. As Viscount Simonds said in *Barclays Bank v. IRC* [1961] AC 509:

> I ... regard its primary function as to bring in something which would otherwise be excluded.

My conclusion from an examination of the above provisions of the Act is that Local Authorities are significantly free from government control and do not exercise government functions.

Lastly, Mr. Karpal Singh for the Plaintiff referred me to a number of cases decided in India which show that permanent injunctions have been granted against municipalities notwithstanding section 56(d) of the Indian Specific Relief Act, 1877, which is equivalent to our section 54(d). Examples of these are: *Raja Ram v. State of Uttar Pradesh* AIR 1963 All 449; *Mohd Shafi v. Sialkot Municipality & Anor* AIR 1940 Lah 451; *Municipal*

*Committee, Sialkot v. Jagat Singh* AIR 1936 Lah 572; *Municipal Board, Manglaur v. M Maharaj* AIR 1965 SC 1147. I appreciate, however, that in none of these cases was the point taken that a municipality is not a department of Government and it appears to have been accepted by the parties that the ban contained in section 56(d) had no application. These cases are not therefore to be taken as authorities for the proposition that municipalities are not a department of Government. As Lord Halsbury said in *Quinn v. Leathem* [1901] AC 495, 506 "... a case is only an authority for what is actually decides.

In view of the above conclusions, it is unnecessary at this stage to consider the various other arguments revolving round the question whether the impugned acts of the Defendants in this case, namely, the issue of the notices under section 72 of the Street, Drainage & Building Act, 1974, were performed in discharge of their "public duties" within the meaning of section 54(d) of the Specific Relief Act, 1950. This question can, perhaps, be considered when the application falls to be determined on its merits.

I am now prepared to hear arguments as to the merits of the application.

**[27]** The Supreme Court in the case of *Government of Malaysia & Anor v. Akasah Ahad* [1985] 1 LNS 107; [1986] 1 MLJ 396 made the following observations:

"Local authority" is defined in section 2 of the Local Authority Act, 1976. It does not include Government of Malaysia. Local Authorities and government of Malaysia are distinct bodies

**[28]** It is worthy to note that, the Court of Appeal in the case of *Majlis Perbandaran Subang Jaya v. Laguna De Bay Sdn Bhd* [2015] 1 CLJ 357; [2014] MLJ 1075 states as follows:

(b) The other power given under section 13 of the LGA 1976 to local authorities is the power of a body corporate and that will be the powers vested in any corporation and has nothing to do with public rights or obligations or interest. This section was not addressed in the *Penang Development Corporation*'s case *(supra)* and in consequence the case has limited application to the facts of the instant case though the court acknowledged that Parliament can give such powers to local authority. As a general rule, a body corporate, if separate legal entity principles apply, can enter into any form of transaction with private parties on such terms and conditions, etc. and such matters if it is a state corporation will usually be a policy matter in relation to state authority or local authority by the State Government, etc. such powers exercised as body corporate cannot be challenged by way of judicial review (except for reasons stated in the early part of the judgment). This can be 'expressly or reasonably inferred' in section 13 of LGA which gives the powers of separate legal entity principle in line with the principles enumerated in *Salomon v. A Salomon Co Ltd* [1897] AC 22. The said section reads as follows:

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13. Every local authority shall be a body corporate and shall have perpetual succession and a common seal, which may be altered from time to time, and may sue and be sued, acquire, hold and sell property and generally do and perform such acts and things as bodies corporate may by law do and perform.

B **[29]** On the basis of the above authorities, in my view, a local authority, being a body corporate with a separate legal entity, is not "Government" within the meaning of ss. 5 and 6 of the Government Proceedings Act.

**Government Proceedings Act**

C **[30]** I turn next to consider the meaning of the word "Government" in the Government Proceedings Act.

**[31]** Section 6 of the Government Proceedings Act provides that:

**Limits of liability of the Government**

D 6(1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default E committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the government had been proceedings against such officer.

F (3) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

G (4) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this H subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

(5) For the purpose of subsection (4) the expression "appropriate financial officer" means, in respect of the Federal Government, the I Minister of Finance, and in respect of the government of a State, the State financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

**[32]** The word "Government" is defined in s. 2 of the Government Proceedings Act as follows: A

> Government includes the Federal Government and the government of the States

**[33]** The question therefore is whether Parliament should be taken to have intended, by the general words "included" in s. 2, to include "a local authority". B

**[34]** On this point, in my view, it is appropriate to refer to the preamble of the Government Proceedings Act as a guide to the legislative intention.

**[35]** The learned author, *Benion On Statutory Interpretation* (5th edn) at p. 732, opined as follows: C

> The preamble may be used as a guide to legislative intention. A sixteenth-century judge remarked that the preamble is 'a key to open the minds of the makers of the Act, and the mischief which they intended to redress'. Four centuries later we find Lord Denning MR Using almost the same language. Lord Moris of Borth-y-Gest said of a preamble: 'it is an introduction to and in a sense of prefatory or explanatory note in regard to the sections which are to follow. Lord Hoffmann said: D
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> > Of course, the preamble to a statute cannot override the clear provisions of the statute. But it is legitimate to have regard to it when seeking to interpret those provisions (see *Bennion, Statutory Interpretation*, 4th edn, 2002, Section 246) and any interpretation which conflicts with the preamble must be suspect. E
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> > Example 246.3 The preamble to the Life Assurance Act 1774 was used by the Judicial Committee of the Privy Council as a guide to the interpretation of s. 2 of that Act. The preamble begins: F
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> > Whereas it hathe been found by Experience, that the making of Insurances on lives, or other Events, wherein the Assured shall have no Interest, hathe introduced a mischievous Kind of Gaming:

**[36]** In my view, the term "Government" must be interpreted in the light of the preamble of the Act. In relation to this, the preamble to the Government Proceedings Act states that it is an Act, relating to proceedings by and against the Federal Government and the Government of the States. G

**[37]** The preamble suggests, therefore, a local authority is not "Government" within the meaning of the Government Proceedings Act. H

**[38]** In the absence of the express words "local authority" in s. 2 of the Government Proceedings Act, in my view, it is not appropriate for the court to assume that "Government" includes "a local authority".

**[39]** If I may add, it is emphatically not the province of the court to write into an Act of Parliament something which is not there. In the case of *St Leornards Municipility v. William & Others* 15 LGRA 62; [1966] Tas SR 166; 1966 WL 80196; the Supreme Court of Tasmania said: I

> The courts do not hesitate to hold that where parliament sets up a statutory body to carry out specific functions that body may lawfully exercise all such implied powers as are essentially necessary to enable it to carry out those functions in accordance with the legislative purpose expressed by parliament. But it is emphatically not the province of the courts to write into an Act of Parliament something which is not there because it may be thought that it would be convenient if it were there. Many judicial pronouncements could be invoked in support of this fundamental proposition of law. I refer to one or two only. First to what Sir Nicholas Tindal said in *Everett v. Wells*((1)): "It is our duty neither to add to nor take from a statute, unless we see good grounds for thinking that the legislature intended something which it has failed precisely to express." Then Lord Mersey in *Thompson v. Goold*((2)): "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity is a wrong thing to do," and finally Lord Loreburn LC in *Vickers v. Evans*((3)): "… we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

**[40]** In my opinion, if the intention of Parliament is to include a local authority as "Government" under the Government Proceedings Act, it would have expressly referred to it in s. 2 of the said Act.

**[41]** Hence, from the legal point of view, ss. 5 and 6 of the Government Proceedings Act is not applicable to a local authority.

**Conclusion**

**[42]** Based on the above reasons, in my view there is no merit in the defendant's preliminary objection that the plaintiff's failure to name the tortfeasor as the defendant in this case will render this suit unsustainable.

**[43]** Thus, the defendant's preliminary objection is overruled.